

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 09-J-13856-DFM
)	
SCOTT DOUGLAS MAYBAUM,)	
)	DECISION AND ORDER OF
Member No. 79309,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

INTRODUCTION

Respondent **Scott Douglas Maybaum** (Respondent) is a member of both the California and Ohio State Bars. In May 2003, the Ohio Supreme Court suspended Respondent from the practice of law for six months and stayed the suspension. Three years later, in December 2006, the Ohio Supreme Court suspended Respondent from the practice of law indefinitely. In November 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) sought to discipline Respondent in California based on the misconduct in the two client matters in Ohio. The State Bar charges that Respondent's misconduct in Ohio also represented violations of the California Rules of Professional Conduct¹ and the California Business and Professions Code.²

¹ Unless noted otherwise, all further references to rules are to the California Rules of Professional Conduct.

² Unless noted otherwise, all further references to sections are to the California Business and Professions Code.

Deputy Trial Counsel Melanie J. Lawrence represented the State Bar. Respondent did not appear in person or by counsel and permitted his default to be entered in this California proceeding.

Section 6049.1 provides, in pertinent part, that a certified copy of a final order by any court of record or other body of any state of the United States authorized by law or rule of court to conduct disciplinary proceedings against attorneys, determining that a member of the State Bar committed professional misconduct in such other jurisdiction, will be conclusive evidence that the member is culpable of professional misconduct in this state, subject only to the following limitations: (1) the degree of discipline to impose; (2) whether, as a matter of law, the member's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in California under the laws or rules applicable to members of the California State Bar at the time of the misconduct in the other jurisdiction; and (3) whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

The member bears the burden of establishing that the conduct for which he was disciplined in the other jurisdiction would not warrant the imposition of discipline in California and/or that the proceedings in the other jurisdiction lacked fundamental constitutional protection. Because Respondent did not participate in this proceeding, he did not establish either of these propositions. As a result, the final record of discipline in Ohio is conclusive evidence of Respondent's culpability of misconduct in California. (Bus. & Prof. Code, § 6049.1, subds. (a) & (b).)

Because Respondent defaulted in this proceeding, the only significant issue to be determined is the recommended level of discipline. In view of Respondent's serious misconduct and the evidence in aggravation, the court recommends that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

On November 5, 2010, a Notice of Disciplinary Charges (NDC) in this matter was filed and properly served on Respondent at his official membership records address (official address), by certified mail, return receipt requested, as provided in section 6002.1, subdivision (c). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The NDC was not returned to the State Bar. The State Bar also sent a courtesy copy of the NDC by first-class mail to Respondent at his official address.

The State Bar's other efforts to contact Respondent were fruitless, which included: (1) sending an e-mail to Respondent at his e-mail address listed with his California membership records; (2) calling Respondent's membership records telephone number (the number was disconnected); and (3) searching for new contact information through zapasearch.com and www.lawyers.justia.com.

The court concludes that Respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Despite the formal service of the NDC and the efforts to notify Respondent of this action, Respondent did not file a response to the NDC; nor did he appear in person or by counsel in the action. On motion of the State Bar, Respondent's default was entered on January 19, 2011. Respondent was enrolled as an inactive member under section 6007, subdivision (e), effective January 22, 2011.

A copy of the default order was properly served on Respondent on January 19, 2011, by certified mail, return receipt requested, addressed to Respondent at his official address. A courtesy copy was also sent by first-class mail, addressed to Respondent at his official address.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in California on February 6, 1978, and has been a member of the State Bar of California at all times since.

Professional Misconduct Proceedings in Ohio

Section 6049.1, subdivision (a), provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction is conclusive evidence that, subject to limited exceptions, the member is culpable of professional misconduct in this state.

The court admits into evidence the following certified copies of the Ohio disciplinary proceedings, which were attached to the NDC as exhibits 1 through 4:

1. The May 7, 2003 Ohio Supreme Court Order on the Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court (exhibit 1);
2. The February 21, 2003 Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (exhibit 2);
3. The December 27, 2006 Ohio Supreme Court Order on the Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court (exhibit 3); and
4. The March 6, 2006 Finding of Facts, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (exhibit 4).

The record of the Ohio disciplinary proceedings conclusively establishes the facts and circumstances surrounding Respondent's professional misconduct in Ohio in 2003 and 2006, which are briefly summarized as follows:

2003 Ohio Supreme Court Order (The Budinger Matter)

Respondent was admitted to the practice of law in Ohio in 1978.

On May 7, 2003, the Ohio Supreme Court suspended Respondent for six months, stayed, for three counts of misconduct in one client matter, to which misconduct Respondent stipulated.

In March 2000, Nora Budinger retained Respondent to represent her in a domestic relations dispute. She agreed to pay Respondent \$175 per hour and paid him \$3,000 as a retainer. Respondent deposited this fee in his general operating account, even though he had not yet earned any part of it. Over the next six months, Respondent sent several invoices to Budinger indicating the amount of the retainer that he had earned. Budinger periodically sent money to Respondent to supplement the diminishing retainer. Respondent deposited each of his client's payments into his general operating account rather than into a client trust account.

The client later reconciled with her husband and lodged a fee dispute complaint against Respondent in April 2001. Respondent and Budinger mediated the dispute. On July 25, 2001, the parties ultimately agreed on a monetary settlement of \$1,068.75, although the retainer account had a credit balance of \$193.75 after the July 24, 2001 invoice. Respondent agreed to remit the settlement by November 1, 2001, but failed to do so. Sometime between November 2001 and January 8, 2003 (the date of the Consent to Discipline Agreement), Respondent had belatedly paid in full the amount of \$1,068.75, in compliance with the mediation agreement.

Consequently, in 2003, the Ohio Supreme Court accepted Respondent's Consent to Discipline Agreement and found that he had violated the following:

- DR 9-102(A)(2) (commingling funds belonging to the attorney with those belonging to a client);
- DR 1-102(A)(5) (engaging in conduct prejudicial to the administration of justice);
- and
- Gov. Bar R. V(4)(G) (failure to complete recommended mediation proceedings).

Violations of DR 9-102(A)(2) and Rule 4-100(A)(2)

This court finds that Respondent’s misconduct constituting a violation of DR 9-102(A)(2) in Ohio constituted a violation of rule 4-100(A)(2) of the California Rules of Professional Conduct.

Ohio’s DR 9-102(A)(2) is substantially identical to rule 4-100(A)(2) of the California Rules of Professional Conduct. DR 9-102(A)(2) provides:

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows: [¶] ... [¶] (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

Rule 4-100(A)(2) provides:

(A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account," "Client's Funds Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction. No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows: [¶] ... [¶] (2) In the case of funds belonging in part to a client and in part presently or potentially to the member or the law firm, the portion belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member or law firm to receive a portion of trust funds is disputed

by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.

2006 Ohio Supreme Court Order (The Cannon-Barron Matter)

On December 27, 2006, the Ohio Supreme Court ordered that Respondent be suspended indefinitely from the practice of law for his misconduct in one client matter. The Supreme Court further ordered, among other things, that upon Respondent's filing of a petition for reinstatement, after two years from the commencement of his suspension, Respondent must submit a report from a qualified mental health professional "establishing that he has successfully completed a treatment program, that he is continuing treatment, and that he can, to a reasonable degree of medical certainty, return to the competent, ethical, and professional practice of law." In addition, the court ordered that, upon reinstatement, "respondent must serve a three-year probation during which he shall (1) continue treatment with a qualified mental-health professional, comply with all orders for medication and appointments, and arrange for quarterly reports to relator on his progress, and (2) allow his practice to be monitored by an attorney of relator's choice who shall counsel respondent on case management, financial responsibility, and client communication."

The facts giving rise to this discipline involved the following:

In June 1998, Respondent represented Dianne Cannon-Barron in a personal injury matter on a contingent-fee basis. Respondent had previously represented her in her 1995 divorce, and the two had been friends.

In March 1999, Respondent settled the claim for \$23,000. Respondent also received \$5,000 on Cannon-Barron's behalf for her medical expenses from the accident, which totaled \$6,976.12. Toward the end of the month, Cannon-Barron agreed to a projected distribution of the settlement proceeds and accepted her portion of the funds, minus the amount that she still owed Respondent for her divorce matter. Respondent and Cannon-Barron agreed that he would

retain \$6,976.12 out of this sum, attempt to negotiate a discount for Cannon-Barron's outstanding medical bills, pay the negotiated discount, and then forward any remaining balance to her.

Pursuant to these arrangements, Respondent deposited \$6,976.12 in his Interest on Lawyer Trust Accounts (IOLTA) account in March 1999. He did not, however, immediately start negotiations to lower Cannon-Barron's medical bills. Instead, he withdrew the funds for his personal and office expenses. Not until July 23, 2004, after Cannon-Barron filed a grievance with the bar association, did Respondent fully refund \$3,359.48, the sum remaining after negotiations with creditors, to Cannon-Barron. In the meantime, he continued to attempt to placate his client about the overdue medical bills that her creditors were attempting to collect.

Respondent admitted that he had misused and had not accounted for the funds owed to Cannon-Barron and to her medical providers. The Ohio Supreme Court thus found that Respondent had violated the following:

- DR 1-102(A)(4) (prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation);
- DR 1-102(A)(6) (prohibiting conduct that adversely reflects on the lawyer's fitness to practice law);
- DR 6-101(A)(3) (prohibiting neglect of an entrusted legal matter);
- DR 9-102(B)(3) (requiring a lawyer to maintain complete records of all funds of a client and to render appropriate accounts); and
- DR 9-102(B)(4) (requiring a lawyer to promptly pay or deliver funds in the lawyer's possession that the client has requested and is entitled to receive).

The Ohio Supreme Court concluded that Respondent misappropriated for more than four years the money to pay Cannon-Barron's creditors.

The State Bar alleges in the NDC that Respondent's violations are also violations of rules 3-110(A), 4-100(B)(3) and 4-100(B)(4) and section 6106. Respondent's violations of the Ohio Disciplinary Rules conclusively establish Respondent's culpability under California rules and section because the applicable provisions are substantially identical.

Violations of DR 1-102(A)(4) and Section 6106

DR 1-102(A)(4) provides that a lawyer must not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Similarly, section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for disbarment or suspension.

Respondent used the settlement funds of \$6,976.12, which were earmarked for his client's medical payments, for his personal and office expenses. He did not forward the remaining difference (\$3,359.48) between the settlement funds and the negotiated amount paid to medical providers until more than four years later, after the client had filed a grievance with the bar association. The Ohio Supreme Court thus found that Respondent had misappropriated the funds for more than four years.

Therefore, Respondent's misappropriation of the settlement funds for his personal and office expenses constituted an act involving moral turpitude and dishonesty in willful violation of section 6106.

Violations of DR 6-101(A)(3) and Rule 3-110(A)

DR 6-101(A)(3) provides that a lawyer must not neglect a legal matter entrusted to him. Similarly, rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Although Respondent settled his client's claim in March 1999 and agreed to negotiate her medical bills, he did not do so until 2004. Thus, his reckless failure to perform legal services with competence violated rule 3-110(A).

Violations of DR 9-102(B)(3) and Rule 4-100(B)(3)

DR 9-102(B)(3) provides that a lawyer must maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

Rule 4-100(B)(3) also provides that an attorney must maintain complete records of all funds, securities, and other properties of a client coming into the possession of the attorney and render appropriate accounts to the client regarding them.

Here, Respondent had misused and not accounted for his client's funds. His conduct constituted a willful violation of rule 4-100(B)(3).

Violations of DR 9-102(B)(4) and Rule 4-100(B)(4)

DR 9-102(B)(4) provides that a lawyer must promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

Similarly, rule 4-100(B)(4) also provides that, as requested by a client, an attorney must promptly pay funds which are in the attorney's possession and which the client is entitled to receive.

By taking more than four years to pay his client the balance of the settlement funds, Respondent had clearly and convincingly violated rule 4-100(B)(4).

Aggravation

Having determined that the Ohio discipline conclusively established professional misconduct in California, the remaining issue is the degree of discipline to recommend. (Bus. & Prof. Code, § 6049.1, subd.(b)(1).)

Although the findings of culpability are subject to the process set forth in section 6049.1, such is not true with regard to issues of aggravation and mitigation. Instead, the burden of proof with regard to those issues is the same as in any other case. (*In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 163-164.) The State Bar had the burden of proving aggravating circumstances by clear and convincing evidence. Respondent had the burden of proving mitigating circumstances by the same clear and convincing standard. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b) and (e).³) Therefore, in determining discipline, the court must weigh the misconduct found in Ohio with the aggravation and mitigation separately shown by clear and convincing evidence in this proceeding. The court finds the following with regard to those issues:

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct are an aggravating factor, including failure to maintain client funds in a trust account, failure to perform competently, failure to render appropriate accounts, failure to promptly return client funds, and committing an act involving moral turpitude and dishonesty. (Std. 1.2(b)(ii).)

Lack of Cooperation in the Disciplinary Process

Although he cooperated with the disciplinary proceedings in Ohio, Respondent failed to participate in the instant disciplinary proceedings, which is a serious aggravating factor. (Std. 1.2(b)(vi).)

³ All further references to standard(s) are to this source.

Mitigation

Respondent may have had some serious mental disabilities and physical infirmities in 2006, but no evidence in mitigation was offered in the present proceeding. (Std. 1.2(e)(iv).) In fact, the Ohio Supreme Court noted in its opinion that “based on Respondent's history of resisting recommended treatment measures . . . Respondent had not had a sustained period of successful treatment and was not able to practice without risk to clients.” Thus, there is no clear and convincing evidence that Respondent no longer suffers from such difficulties, particularly in light of the Ohio Supreme Court’s 2006 order that before Respondent could return to the practice of law, he must submit a report from a qualified mental-health professional establishing that he has successfully completed a treatment program and that he can, to a reasonable degree of medical certainty, return to the competent, ethical, and professional practice of law.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2, 2.3, 2.4, and 2.10 apply in this matter.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although

the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.2(a) provides: “Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.” The amount of money misappropriated by Respondent for more than four years was not insignificant and there are no mitigating circumstances in this matter.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty must result in actual suspension or disbarment.

Standard 2.4 provides that culpability of a member’s willful failure to perform services and willful failure to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Finally, standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in

reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Respondent's history of mishandling entrusted funds is most troubling. In Ohio, he was disciplined twice during a period of less than four years in 2003 and 2006. Nonetheless, he continued to disregard his professional obligations. The misconduct in the second record of discipline occurred during his first disciplinary proceeding when he should have been more vigilant about his fiduciary duties to his clients.

As the Ohio Supreme Court stated, "Respondent was motivated by dishonesty and self-interest ... Respondent commandeered his client's money for his own use – he knew it was wrong but withdrew the money from his trust account anyway." Respondent quipped: "I thought ... I could just get away with it."

The Ohio Supreme Court further noted that Donald Jay Weinstein, Ph.D., a psychologist, had assessed Respondent as being unable to control impulses, accept societal standards, and experience genuine remorse for misdeeds. Dr. Weinstein opined that Respondent's personality disorder was a contributing factor in Respondent's misconduct, which made spending someone else's money an acceptable solution when Respondent needed it. Dr. Weinstein further predicted that Respondent's personality disorder could lead to further acts of deceit and selfishness and endanger clients. The Ohio Supreme Court therefore concluded that because Respondent was inclined to use the symptoms of his condition to manipulate others' impressions and escape responsibility for his actions, Respondent could not practice at this time without risk to the public. Accordingly, the Ohio Supreme Court stated that the recommended indefinite suspension with conditions, including strategies to compel Respondent's compliance with medication and therapeutic prescriptions, is thus an appropriate sanction.

Respondent was therefore suspended from the practice of law in Ohio for two years and until he has shown that he had successfully completed a treatment program and he is continuing treatment and that he can, to a reasonable degree of medical certainty, return to the competent, ethical, and professional practice of law.

Here, the State Bar urges disbarment. The court agrees and finds the following cases instructive.

In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, the Supreme Court disbarred an attorney who intentionally misappropriated \$29,000 from his law firm. In mitigation, the attorney had no prior record of discipline in 12 years of practice of law and suffered from emotional problems. The court did not find these factors sufficiently compelling to warrant less than disbarment.

In *Grim v. State Bar* (1991) 53 Cal.3d 21, the attorney misappropriated over \$5,500 of client funds and did not return the funds to the client until after almost three years later and after the State Bar had initiated disciplinary proceedings and held an evidentiary hearing. The Supreme Court did not find compelling mitigating circumstances to predominate and rejected his defense of financial stress as mitigation because his financial difficulties which arose out of a business venture were neither unforeseeable nor beyond his control. Finally, the attorney intended to permanently deprive his client of her funds. The Supreme Court therefore did not find his cooperation with the State Bar and evidence of good character to constitute compelling mitigation in view of the aggravating factors. He was disbarred.

In a similar case, *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, the Review Department recommended disbarment (which the Supreme Court adopted in 2002) for an attorney whose misconduct was found in Michigan. The Review Department determined that the Michigan final disciplinary order conclusively established his culpability of professional misconduct in California, including misappropriation of \$12,500 of client funds,

failure to maintain client funds in trust, failure to pay funds to a client promptly, and failure to account.

“An attorney who deliberately takes a client’s funds, intending to keep them permanently, and answers the client’s inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 39.)

Like the attorneys in *Kaplan*, *Grim*, and *Freydl*, Respondent intentionally took his client’s funds, spent them for his own benefit, and did not pay the medical providers and the client until more than four years later.

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Here, Respondent had flagrantly breached his fiduciary duties by violating rules 3-110(A), 4-100(A)(2), 4-100(B)(3), and 4-100(B)(4) and section 6106.

More significantly, Respondent’s misappropriation weighs heavily in assessing the appropriate level of discipline. The “misappropriation in this case . . . was not the result of carelessness or mistake; [Respondent] acted deliberately and with full knowledge that the funds belonged to his client. Moreover, the evidence supports an inference that [Respondent] intended to permanently deprive his client of her funds.” (*Grim v. State Bar, supra*, 53 Cal.3d 21, 30.) “It is precisely when the attorney’s need or desire for funds is greatest that the need for public protection afforded by the rule prohibiting misappropriation is greatest.” (*Id.* at p. 31.)

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The misappropriation of client funds is a grievous breach of an attorney’s ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all

but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (*Grim v. State Bar, supra*, 53 Cal.3d 21.)

While Respondent may have had mental and physical issues, the court’s “primary concern must be the fulfillment of proper professional standards, whatever the unfortunate cause ...” (*In re Abbott* (1977) 19 Cal.3d 249, 254.) Lesser discipline than disbarment is not warranted because the amount misappropriated is not insignificantly small and there are no compelling mitigating circumstances.

Moreover, an attorney’s failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) Respondent’s failure to appear and participate in the California disciplinary proceedings shows that he either fails to comprehend his professional obligations as a member of the bar or is either unwilling or unable to comply with those obligations. Whichever that may prove to be, the court is seriously concerned about the possibility of similar misconduct recurring. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Respondent’s failure to participate in this proceeding leaves the court without information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct.

Therefore, having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by Respondent. Accordingly, the court so recommends.

RECOMMENDATIONS

Disbarment Recommendation

Accordingly, the court recommends that Respondent **Scott Douglas Maybaum** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order Respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁴

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and are enforceable both as provided in section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that Respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and *new* rule 5.111(D) of the Rules of Procedure of the State Bar, effective January 1, 2011. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: May _____, 2011

DONALD F. MILES
Judge of the State Bar Court

⁴ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)